VERMONT LABOR RELATIONS BOARD

CHITTENDEN SOUTH SUPERVISORY TEACHERS' ASSOCIATION	)	
v.	)	DOCKET NO. 82-16
CHITTENDEN SOUTH SUPERVISORY SCHOOL DISTRICT BOARD OF SCHOOL DIRECTORS	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On March 4, 1982, the Chittenden South Supervisory District Teachers' Association ("Association"), an affiliate of the Vermont Education Association ("VEA"), filed an unfair labor practice charge with the Vermont Labor Relations Board, charging that the Chittenden South Supervisory School District Board of School Directors ("School Board") in violation of 21 VSA §1726(a)(1)(2) and (5), refused to bargain collectively in good faith with the Association, attempted to undermine the credibility of the Association and its representative, and substantially reduced the number of work days and salary of the Association president. On March 15, 1982, the School Board filed a response to the charge. The Board, taking the verified allegations contained in the charge as true, issued an unfair labor practice complaint on March 19, 1982.

A hearing was held before Board Members Kimberly B. Cheney, Chairman, and William G. Kemsley, Sr., on June 10, 1982. Member James S. Gilson was absent. The Association was represented by VEA Uniserv

Director Norman Bartlett. Attorney Gary Barnes represented the School Board. At the hearing, the Board amended its complaint pursuant to 21 VSA §1727(a) to withdraw those portions of the complaint relating to the undermining of the credibility of the Association and its representative and the reduction in workdays and salary of the Association president.

Requested Findings of Fact and Memoranda were filed by the Association and School Board on June 25 and 28, 1982, respectively.

FINDINGS OF FACT

1. Beginning in late August of 1981, teachers employed by the Chittenden South Supervisory School District ("School District") started to organize the Association.

2. The School District is a supervisory union school district as authorized in 16 VSA, Chapter 7, §261-325. The School District provides administrative and other school-related services to the towns of Charlotte, Hinesburg, St. George, Shelburne, Williston, and Champlain Valley Union High School. All the school districts served are located in Chittenden County, Vermont.

3. On October 19, 1981, Mrs. Ruth Stokes, Chairperson of the School Board, received a letter from the Association indicating that eleven School District employees were in the process of forming a collective bargaining unit. This letter stated that a petition for recognition of the Association would be delivered by November 1, 1981 (School Board Exhibit B).

4. A petition was received by Stokes by October 30, 1981, requesting recognition of a unit of certified special services teachers employed by the School District (School Board Exhibit C). The petition was signed by 11 of the School District's 14 special services teachers, and indicated the Association would be affiliated with the Champlain Valley Union High School Teachers' Association. A covering letter was attached to the petition, and it was signed by Joseph P. Blanchette. Blanchette, a teacher at Champlain Valley Union High School, was acting as a representative of the Association.

5. On November 5, 1981, at a hearing on another matter, Blanchette asked James Rice, Director of Personnel for the School District, what action the School Board was going to take regarding the Association's petition. Rice informed Blanchette the School Board was going to request a referendum.

6. On November 9, 1981, Rice, acting for the Employer, formally notified Blanchette by a letter that the School Board had rejected the Association's petition for voluntary recognition,and was requesting a secret ballot referendum pursuant to 16 VSA §1992. In the letter, Rice questioned the Association's affiliation with the Champlain Valley Union High School Teachers' Association; and he enclosed a list of 14 employees the School Board believed were eligible for inclusion in the bargaining unit (School Board Exhibit G).

7. On November 10, 1981, Rice contacted the Champlain Valley Union High School Teachers' Association, and learned that group had sanctioned the affiliation of the Association with it (School Board Exhibits H, I).

8. On or about November 13, 1981, Blanchette and Rice had a phone conversation during which agreement was reached that 14 employees properly belonged in the bargaining unit, as maintained by Rice in his November 9, 1981, letter. Also, there was discussion regarding a date for the referendum. Blanchette requested the referendum be held on December 4, 1981. Rice rejected December 4, 1981, because, with Thanksgiving vacation coming up in a few weeks, he believed it did not give him sufficient opportunity to meet with the eligible members of the bargaining unit and attempt to dissuade them from voting to have the Association represent them. Instead, Rice proposed either December 11, 1981, or December 18, 1981. Blanchette did not express opposition to Rice meeting with the employees, but felt the referendum dates proposed by Rice were too late. No agreement was reached on the referendum date during that conversation.

9. Blanchette spoke with Recille Hamrell, Association president, on November 16 or 17, 1981, about the scheduling problem, and asked her to speak with Rice.

10. Hamrell spoke with Rice on November 20 concerning the scheduling of the election. They discussed and were not able to come to agreement on the date and location of the referendum and provision for referendum observers. In the course of that telephone conversation, Hamrell asked Rice about certain procedures under the Teachers' Labor Relations Act for organizing collective bargaining representatives. Rice offered to provide a copy of the Teachers' Labor Relations Act to Hamrell. Hamrell obtained a copy of the Act from Rice on or about November 23, 1981.

11. On November 20, 1981, Rice, in a letter to Blanchette, proposed only December 11, 1981, as the date for the referendum, noting that he "would like a reasonable time to prepare for the election." (School Board Exhibit J).

12. On November 21, 1981, Hamrell told Blanchette she had spoken with Rice the day before and had been unable to come to agreement on the conducting of the referendum.

13. On November 23, 1981, Blanchette spoke with Norman Bartlett, VEA Uniserv Director. Bartlett advised Blanchette to get a date for the referendum as soon as possible.

14. That same day, after talking to Bartlett, Blanchette called Rice and they agreed to the location of the referendum, the form of the ballot to be used, and the observers to be present at the voting. After some disagreement as to the date of the election, they also agreed the referendum would be held on December 11, 1981.

15. On November 24, 1981, Rice mailed a letter to all affected teachers notifying them of a meeting on December 2, 1981, to discuss the ramifications of the referendum vote. The letter also contained several questions and answers made up by Rice, designed to influence the employee's vote in the referendum (School Board Exhibit L). Rice also invited Blanchette to attend the meeting.

16. The meeting was held on December 2, 1981, with Blanchette in attendance. The meeting lasted approximately one-half hour.

17. At the request of the Association, the December 11, 1981, date for the referendum was changed to December 14, 1981, and a notice of

the election was sent by Rice to each teacher on December 9, 1981 (School Board Exhibit K). Twelve teachers cast ballots in the election, and all ballots cast were in favor of the Association as the collective bargaining representative.

18. Within a week after the election, Rice met with bargaining unit member Trish McHarg and discussed the collective bargaining process with her. During the conversation, Rice mentioned the following provision of the Teachers' Labor Relations Act, 16 VSA §2003:

> The teacher or administrator organizations holding exclusive negotiating rights shall make a request for commencement of negotiations no later than one hundred and twenty days prior to the school district's annual meeting.

Rice told McHarg the Association had not complied with this provision of the Act. This was the first time Rice mentioned to anyone in the Association this provision of the Act although he was aware of it prior to the conducting of the referendum.

19. The School District's annual meeting was scheduled for April 7, 1982. December 7, 1981, was the last day prior to the period which constituted the 120 day period.

20. On January 3, 1982, Hamrell requested a date in February to negotiate a master contract for the 1982-83 school year (School Board Exhibit M). Hamrell did not send the letter requesting negotiations immediately after the December 14 election due to her own negligence.

21. On January 8, 1982, Joseph Loretan, School District Superintendent, notified Hamrell:

> The Board authorized its representives to arrange with you mutually agreeable dates to commence negotiations for the 1983-84 school year. To negotiate for 1982-83,

as you requested, would be in direct violation with T. 16, Ch. 57, Section 2003."

(School Board Exhibit O)

22. Prior to the December 14, 1981 referendum, no representative of the Association mentioned the need to hold an election by December 7, 1981 because of the requirements of 16 VSA §2003.

23. Blanchette was familiar with the provisions of 16 VSA §2003 when acting as an Association representative but believed it was not applicable to this case because: 1) he did not think it applied to a first-year bargaining situation, and 2) he did not know of any way to force a quicker referendum. Hamrell was not familiar with the provisions of 16 VSA §2003.

24. 16 VSA §1992(d) provides, in pertinent part:

> Failing agreement among all interested parties on the conduct of the referendum, any of the petitioning parties or the school board may request that the referendum be conducted with the aid and assistance of the American Arbitration Association or its designee. The American Arbitration Association or its designee shall have the responsibility for making decisions on any and all matters in dispute regarding the mechanics of the referendum, eligibility and other necessary decisions relating to the conduct of the referendum.

Neither Blanchette nor Hamrell were aware of this provision, and did not have knowledge of the American Arbitration Association being available to resolve disputes.

25. The budget process for the 1982-83 school year began in early July, 1981. A proposed budget was sent to members of the School Board by early November, 1981. The proposed budget was, thus, essentially complete 150 days prior to the School District's annual meeting.

26. The School Board meets monthly. Its December, 1981 meeting was held December 2. Its January, 1982 meeting was held January 6, 1982. The Association's request to negotiate was received by the School Board prior to its January 6 meeting. If the request had been filed between December 3 and December 7, 1981, it would have met the 120 day requirement of 16 VSA §2003, but could not have been considered by the School Board earlier than the request in this case, since the Board would already have held its December, 1981 meeting. Thus, the late request by the Association had no substantive effect on delaying negotiation

OPINION

Motion to Reopen

The first issue before us is to rule on the School Board's motion to reopen the evidence, submitted subsequent to the hearing on this matter, to permit the introduction of the affidavits of School District Superintendent Joseph Loretan, School Board Chairperson Ruth Stokes, and School District Personnel Director James Rice. Pursuant to Section 11.20 of the Board's Rules of Practice, we deny the motion to reopen since Loretan, Stokes, and Rice were available to offer any relevant testimony at the hearing.

Merits

At issue is whether the School Board has committed an unfair labor practice in violation of 21 VSA §1726(a)(1) and/or (5) by refusing to bargain for the 1982-83 school year. The School Board bases its refusal to bargain on 16 VSA §2003, which provides:

> The teacher or administrator organizations holding exclusive negotiating rights shall make a request for commencement of negotiations no later than one hundred and twenty days prior to the school district's annual meeting.

The School Board maintains the Association did not comply with this provision since it did not request negotiations until January 3, 1982, 93 days prior to the school district's annual meeting scheduled for March 5, 1982.

The Association believes the School Board should be required to bargain for the 1982-83 school year because the request to negotiate did not meet the statutory time frame due to the School Board's own actions. The Association argues that the request was late because the referendum by which the Association became exclusive bargaining representative was conducted later than 120 days prior to the annual meeting at the request of the School Board and the School Board was in complete charge of the timing of the referendum. The Association maintains the School Board has gained an unfair advantage over the Association, and the way to avoid such an obvious inequity is to accept the Association's petition for recognition, filed well before the 120 day limit, as a request to negotiate.

At the outset, we reject the Association's position that we accept their recognition petition to the School Board as a request to negotiate. The Association's request ignores the express provisions of 16 VSA §2003 that a request for commencement of negotiations shall be made by a teacher organization "holding exclusive negotiating rights". At the time the Association filed the petition they did not hold exclusive bargaining rights, but were requesting such rights.

The Association, in support of its position that the School Board should be required to bargain for the 1982-83 school year, maintains the School Board used the referendum to gain time and avoid collective bargaining for the current year; that there was never any real question of majority status or appropriateness.

We do not feel the School Board's decision to request a referendum improper. They are given complete discretion by statute to either require or waive a referendum by 16 VSA §1992(a), which provides:

> An organization purporting to represent a majority of all of the teachers or administrators employed by the school board may be recognized by the school board without the necessity of a referendum upon the submission of a petition bearing the valid signatures of a majority of the teachers or administrators employed by that school board. Within fifteen days after receiving the petition the school board shall notify the teachers or administrators of the school district in writing of its intention to either require or waive a secret ballot referendum. (emphasis added)

Nor do we find that their further actions between the filing of the election petition and the referendum rise to the level of an unfair labor practice. The request by Personnel Director Rice to meet with the teachers and attempt to dissuade them from voting for the Association was in accord with free speech rights granted employers in election campaigns generally accepted in labor law, NLRB v. Gissel Packing Co., 395 US 575 (1969), I.U.O.E. and Town of Springfield, 3 VLRB 221 (1980), and specifically provided for regarding labor relations for teachers by our Legislature through enactment of 21 VSA §1728, which provides:

> The expression of any views, argument or opinion, or the disseminiation thereof, whether in written,

> printed, graphic, oral or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or promise of benefit.

The request by the School Board to hold the election on December 11, 1981, is not an unfair labor practice even though School Board agent Rice was well aware this would make any subsequent request of the Association to negotiate untimely pursuant to 16 VSA §2003. Contrary to the Association's contention, the School Board was not in complete charge of the timing of the referendum. The Teachers' Labor Relations Act, 16 VSA §1992(d), expressly provides a procedure for resolving disputes over the timing of referendums:

> In the interest of expediting the referendum and minimizing the cost thereof, the petitioning party or parties and the school board may agree together to conduct cooperatively the referendum themselves. Alternatively, the parties may select an impartial person or agency to conduct or aid in the conducting of the referendum. Failing agreement among all interested parties on the conduct of the referendum, any of the petitioning parties or the school board may request that the referendum be conducted with the aid and assistance of the American Arbitration Association or its designee. The American Arbitration Association or its designee shall have the responsibility for making decisions on any and all matters in dispute regarding the mechanics of the referendum, eligibility and other necessary decisions relating to the conduct of the referendum.

This provision provides an avenue for the parties to seek third party assistance to resolve any disputes regarding a referendum. Through invoking this provision, the Association could have had their concerns about the timing of the referendum addressed. However, they did not invoke this provision and, in fact, agreed to holding the referendum within the 120 day period prior to the annual meeting.

By not objecting to the timing of the referendum until after it was held, and this not being a case where the parties reached a quid pro quo agreement that the referendum would be conducted one week after the start of the 120 day period but the parties would still negotiate, the Association waived the issue of timeliness of the referendum. In Bean Construction Co. v. Middlebury Associates, 139 Vt. 200 (1981), our Supreme Court decided that where an arbitration award was rendered in an untimely manner, an objection based on tardiness in rendering the award was waived when it was not asserted before rendition of the award. Similarly here, the Association waived its objection to the timeliness of the referendum by not raising the timeliness issue prior to the conducting of the referendum.

This is essentially a case where the Association did not actively attempt to ensure the referendum was held prior to the commencement of the 120 day period because they neglected or were ignorant of the provisions of the Teachers' Labor Relations Act. Although the School Board's actions of knowingly withholding the contents of 16 VSA §2003 from the Association prior to the referendum and then holding it against them after the referendum do not bode well for future labor relations between the parties, they cannot be held accountable for the failure of the Association to preserve their statutory rights. This is particularly so when the Association is affiliated with the VEA, the largest public sector union in the State and we presume, knowledgeable of the provisions of the Teachers' Labor Relations Act.

16 VSA §2003 provides teachers organizations shall request commencement of negotiations no later than 120 days prior to the school district's annual meeting. This wording makes the 120 day time frame mandatory, Town of Tiverton v. Fraternal Order of Police, 372 A2d 1273 (1977), and since the actions of the School Board did not prevent the Association from complying with this provision, we do not find the School Board committed an unfair labor practice by refusing to bargain for the 1982-83 school year.

ORDER

Now therefore, based on the foregoing findings of facts, and for the foregoing reasons, we find the Chittenden South Supervisory School District Board of School Directors did not violate 21 VSA §1726(a)(1) and (5), and accordingly, the unfair labor practice complaint issued in this matter is ordered DISMISSED and is DISMISSED.

Dated this 9th day of September, 1982.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.